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Attorneys for eTreppid Technologies, LLC and Warren Trepp

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DENNIS MONTGOMERY, an individual; and
MONTGOMERY FAMILY TRUST, a California
Trust,

Plaintiffs,

vs.

ETREPPID TECHNOLOGIES, L.L.C., a Nevada
Limited Liability Company; WARREN TREPP,
an individual; DEPARTMENT OF DEFENSE of
the UNITED STATES OF AMERICA; and
DOES 1 through 10,

Defendants.

AND RELATED CASE(S)

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Case No. 3:06-CV-00056-PMP-VPC
Base File

3:06-CV-00145-PMP-VPC

**ETREPPID'S AND TREPP'S
MOTION TO COMPEL
TURNOVER OF HARD DRIVES**

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TURNOVER OF HARD DRIVES**

eTreppid Technologies, L.L.C., and Warren Trepp, (hereinafter collectively referred to as "eTreppid"), by and through their counsel Holland & Hart LLP, hereby submit their Motion to Compel Turnover of Hard Drives. This Motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Judgment Debtor Dennis Montgomery has admitted, through counsel, that he is in possession of twelve hard drives containing source code. eTreppid requested that Montgomery produce these hard drives several months ago. However, Montgomery has refused to provide eTreppid with copies of these hard drives, instead insisting that eTreppid is entitled only to inspect and copy the hard drives at the Southern California office of eTreppid's counsel, at eTreppid's own expense.

Montgomery's position is untenable. Even though he, along with the remaining Judgment Debtors, owe eTreppid a total of \$26.5 million dollars, he is asserting that eTreppid should bear the cost of duplicating hard drives containing source code against which, absent the sudden appearance of other assets, eTreppid is likely entitled to execute. Montgomery's position places an unfair burden on eTreppid. Accordingly, eTreppid respectfully requests that this Court order Montgomery to produce the requested hard drives to the offices of eTreppid's counsel in Reno, Nevada.

II. STATEMENT OF RELEVANT FACTS

As this Court well knows, eTreppid requested documents from Montgomery, including source code, on February 23, 2009. Montgomery failed to produce these documents, and eTreppid was subsequently obliged to file a motion to compel. On May 26, 2009 (Doc. No. 1054), this Court ordered Montgomery to produce a number of documents, including the subject source code, on or before June 3, 2009.

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1 On June 5, 2008, Montgomery's counsel advised counsel for eTreppid that certain hard
2 drives containing the requested source code were available for inspection and copying at the Los
3 Angeles office of the Liner Firm. Attached hereto as **Exhibit 1** is a true and correct copy of the
4 email string between Ellyn Garofalo and Steve Peek through which this was communicated.
5 eTreppid subsequently requested that Montgomery deliver the hard drives either to the Reno
6 offices of counsel for eTreppid or to the office of Montgomery's attorney in Las Vegas.
7 Montgomery refused, stating that "he does not have the financial resources to copy the drives."
8 *Id.*

9 Thus, even though Montgomery has been ordered to produce the subject hard drives, he
10 has refused to provide them to eTreppid because, he states, he is unable to pay for copies to be
11 made.

12 **III. ARGUMENT**

13 It is undisputed that Montgomery is obliged to produce the hard drives at issue. On May
14 26, 2009, this Court ordered that "Mr. Montgomery and/or the Montgomery Family Trust shall
15 produce the following documents: . . . source code and any[and] all intellectual property of
16 Blxware and/or Montgomery, as well as running and operative object code, all system
17 documentation, and functional specifications."

18 Instead of producing the hard drives, Montgomery has stated that they are available for
19 inspection and copying at the offices of his counsel. He insists that eTreppid should bear the
20 expense of creating copies of these hard drives. Although Montgomery's position would have
21 some merit in a typical Fed. R. Civ. P. 34 requests for production, under the present
22 circumstances of this case, Montgomery's position makes no sense.

23 Fed. R. Civ. P. 37 grants courts broad discretion to apply appropriate sanctions for
24 discovery abuses. Rule 37(b)(2) states that, where a party fails to comply with a court order, the
25 court "may make such orders in regard to the failure as are just." Here, as Montgomery has
26 failed to comply with this Court's order requiring that he provide the subject hard drives, this
27 Court may make such orders as are just, including an order requiring that Montgomery provide
28 the subject hard drives to eTreppid without any further delay.

1 Montgomery, along with the remaining Judgment Debtors, owes eTreppid \$26.5 million,
2 plus accrued interest. The Judgment Debtors have failed to pay eTreppid any of the amounts due
3 under the settlement agreement. If, as Montgomery's counsel asserts, Montgomery lack the
4 means to pay for the copying of these hard drives, then the source code contained thereon is very
5 likely an asset of Montgomery's against which eTreppid may ultimately execute. By requesting
6 that eTreppid pay for the cost of duplicating these hard drives, Montgomery is, in effect, seeking
7 to impose upon eTreppid expenses that have accrued as a direct result of Montgomery's refusal
8 to satisfy his obligations under the settlement agreement and his failure to comply with
9 eTreppid's judgment debtor discovery requests in a timely manner. It is absurd for Montgomery
10 to assert that eTreppid should bear these costs.

11 Accordingly, eTreppid respectfully requests that this Court require Montgomery to
12 deliver the subject hard drives to the Reno, Nevada office of the undersigned counsel for
13 eTreppid.

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1 **IV. CONCLUSION**

2 For the reasons set forth above, eTreppid respectfully requests that the Court grant the
3 present Motion to Compel Turnover of Hard Drives.

4 Dated: June 18, 2009.

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6
7 /s/ Jerry M. Snyder

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PROOF OF SERVICE

I, Cynthia L. Kelb, declare:

I am employed in the **City of Reno, County of Washoe, State of Nevada**, by the law offices of Holland & Hart LLP. My business address is: **5441 Kietzke Lane, Second Floor, Reno, Nevada 89511**. I am over the age of 18 years and not a party to this action. I am readily familiar with Holland & Hart LLP's practice for collection of mail, delivery of its hand-deliveries and their process of faxes.

On June 18, 2009, I caused the foregoing **ETREPPID'S AND TREPP'S MOTION TO COMPEL TURNOVER OF HARD DRIVES** to be:

 X filed electronically with the U.S. District Court and therefore the court's computer system has electronically delivered a copy of the foregoing document to the following person(s) at the following e-mail addresses:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on June 18, 2009.

/s/ Cynthia L. Kelb
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